

STATE OF MICHIGAN  
COURT OF APPEALS

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GLIEBERMAN AVIATION, L.L.C.,

Petitioner-Appellant,

v

DEPARTMENT OF TREASURY,

Respondent-Appellee.

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UNPUBLISHED

September 21, 2006

No. 261599

Tax Tribunal

LC No. 00-281362

Before: Cavanagh, P.J., and Markey and Meter, JJ.

PER CURIAM.

Petitioner appeals by right the judgment of the Michigan Tax Tribunal (MTT) concluding that it was not complying with the requirements of the Use Tax Act (UTA), MCL 205.91 *et seq.*, and upholding respondent's use tax assessment of \$249,000, a penalty of \$49,800 and interest of \$6,980.17 arising from the purchase of a 1980 Hawker Siddeley aircraft. We affirm.

Petitioner argues that the MTT erred in concluding that it did not timely elect to pay use tax on the rental receipts from the rental and lease of the 1980 aircraft in lieu of paying sales or use tax on the full cost of the plane. We disagree.

In the absence of fraud, our review of a Tax Tribunal decision is limited to determining whether the tribunal committed error applying the law or adopted a wrong legal principle. *Michigan Milk Producers Ass'n v Dep't of Treasury*, 242 Mich App 486, 490; 618 NW2d 917 (2000). We will not disturb the tribunal's factual findings as long as they are supported by competent, material, and substantial evidence on the whole record. *Id.* at 490-491.

The interpretation of a statute is a question of law that this Court reviews de novo but we will generally defer to the tribunal's interpretations of the statutes it administers and enforces. *Schultz v Denton Twp*, 252 Mich App 528, 529; 652 NW2d 692 (2002). "The primary goal of statutory interpretation is to give effect to the intent of the Legislature." *Guardian Industries Corp v Dep't of Treasury*, 243 Mich App 244, 248; 621 NW2d 450 (2000). We review the plain language of the statute itself and if it is clear and unambiguous, judicial interpretation is not permitted. *Id.* at 248-249. Only if a statute's language is ambiguous may this Court look outside the statute to ascertain the Legislature's intent. *Id.* at 249. "Although tax laws are construed against the government, tax-exemption statutes are strictly construed in favor of the taxing unit." *Inter Coop Council v Dep't of Treasury*, 257 Mich App 219, 222; 668 NW2d 181 (2003).

“The use tax under the UTA complements the sales tax and is designed to cover those transactions not covered by Michigan’s General Sales Tax Act.” *WPGPI, Inc v Dep’t of Treasury*, 240 Mich App 414, 416; 612 NW2d 432 (2000). Every person in this state is subject to the UTA “for the privilege of using, storing, or consuming tangible personal property in this state at a rate equal to 6% of the price of the property or services . . . .” MCL 205.93(1).<sup>1</sup> The UTA defines the term “use” as “the exercise of a right or power over tangible personal property incident to the ownership of that property including transfer of the property in a transaction where possession is given.” MCL 205.92(b). The tax imposed under the UTA for the privilege of using an aircraft “shall be collected before the transfer” of the aircraft. MCL 205.93(2).

At the time petitioner purchased the 1980 aircraft, MCL 205.95(a) provided in relevant part: “Every person when engaged in the business of selling tangible personal property for storage, use or other consumption in this state, *shall register with the department . . . .*” Petitioner contends that under the UTA and 1979 AC, R 205.132 (hereinafter “rule 82”) it timely registered for the rental receipt method because it submitted the use tax to respondent following its receipt of income from its lessee, Corporate Flight, Inc.

Rule 82 provides that “lessors may opt to pay the use tax at the time of purchase of tangible personal property or to report and pay use tax on the rental receipts from the rental of that property, and describes the procedures for making the election.” *Czars, Inc v Dep’t of Treasury*, 233 Mich App 632, 645; 593 NW2d 209 (1999). Rule 82 states, in relevant part:

(1) A person engaged in the business of renting or leasing tangible personal property to others *shall pay the Michigan use tax at the time he purchases tangible personal property, or he may report and pay use tax on the rental receipts from the rental thereof.* A person remitting tax on the purchase price as a purchaser-consumer or remitting tax on rental receipts as a lessor, *shall follow 1 or the other methods* of remitting for his entire business operation. *A person remitting tax on rental receipts shall be the holder of a sales tax license, or a registration as is provided in the use tax act.* Each month such lessor shall compute and pay use taxes on the total rentals charged. [Emphasis added.]

Rule 26, 1979 AC, R 205.26, governs registration under the UTA and requires mandatory registration when a lessor of tangible personal property is claiming use tax under the rental receipts method. Rule 26 further states, in pertinent part:

(2) An application for a use tax registration shall be obtained from the department. A license fee is not required.

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<sup>1</sup> All statutory references are to those in effect at the time petitioner purchased and first used in Michigan the 1980 aircraft.

(4) Registration under the use tax act requires the filing of monthly, quarterly or annual tax returns on forms furnished and pre-identified by the department. Failure to register and file returns can subject the taxpayer to heavy penalties.

In the present case, the record reveals that the MTT's finding that petitioner did not timely register for the return receipts method to report use tax is supported by competent, material, and substantial evidence. This standard requires more than a scintilla of evidence, but less than a preponderance. *Canterbury Health Care, Inc v Dep't of Treasury*, 220 Mich App 23, 28; 558 NW2d 444 (1996). At the time petitioner purchased the 1980 aircraft, the UTA, rule 26 and rule 82 clearly required that a taxpayer register and make a rental receipts election before or at the time of the purchase of the tangible personal property. The record is unequivocal that petitioner did not do so with respect to the 1980 aircraft. Petitioner acquired the 1980 aircraft on August 16, 2000, and it was transported into the state on August 18, 2000. Respondent submitted a claim of exemption form to petitioner on October 31, 2000; however, petitioner did not attempt to register for the return receipts method to report the use tax until December 15, 2000. Further, petitioner did not send respondent a signed release until December 30, 2000. Petitioner used the 1980 aircraft multiple times from August 2000 to the end of December 2000. Thus, because petitioner failed to register with respondent and elect to pay using the rental receipts method on or before August 16, 2000, and used the 1980 aircraft in Michigan beginning on August 18, 2000, petitioner was subject to payment of the use tax on the full value of the 1980 aircraft required by MCL 205.93.

We also find the MTT's legal analysis is correct. The MTT has consistently interpreted the UTA, and rules 26 and 82, to require registration and election before a lessor acquires taxable property and receives income from a lessee. "Long-standing administrative interpretations by those charged with administering a statute are entitled to considerable weight." *Herald Wholesale, Inc v Dep't of Treasury*, 262 Mich App 688, 693; 687 NW2d 172 (2004). MCL 205.95 requires that a lessor "shall register with the department." Rule 82 requires an entity "remitting tax on rental receipts shall be the holder of a sales tax license, or a registration as is provided in the use tax act." The word "shall" generally designates a mandatory provision. *Mollett v Taylor*, 197 Mich App 328, 339; 494 NW2d 832 (1992). Because petitioner did not register the 1980 aircraft with the department when it was purchased and brought into the state, and did not register until several months later, we conclude that the MTT did not commit an error of law or adopt a wrong legal principle. *Michigan Milk Producers, supra* at 490-491.

Petitioner contends that in light of its failure to elect the rental receipts method before its purchase of the 1980 aircraft, its subsequent payment of use tax based on the rental receipt method from February 2001 to December 2003 was "reasonably consistent" with the registration and election method. Petitioner argues that the MTT erred in failing to order respondent to exercise its discretion and accept its belated rental receipts registration and election. But, petitioner has not submitted any case law or legal authority showing that a "reasonably consistent" effort in submitting the required registration and election is adequate to retroactively invoke the statutory election. "It is not enough for an appellant in his brief simply to announce a position or assert an error and then leave it up to this Court to discover and rationalize the basis for his claims, or unravel and elaborate for him his arguments, and then search for authority either to sustain or reject his position." *Mitcham v Detroit*, 355 Mich 182, 203; 94 NW2d 388 (1959). Moreover, MCL 205.93(2) requires that the tax for the privilege of using an aircraft

“shall be collected before the transfer” of the aircraft. As the MTT noted, because petitioner was not registered before its purchase of the 1980 aircraft, the department had no option but to assess petitioner based on its purchase price. Accordingly, we conclude that petitioner’s argument is without merit.

Petitioner next argues that because it exercised ordinary business care, the MTT erred in upholding the assessment of a penalty for petitioner’s failure to file or pay the tax. We disagree.

“Penalties and interest shall be added to the [use] tax if applicable as provided” under the UTA. MCL 205.93(1). Application of a penalty for failure to pay or file a tax payment is governed by MCL 205.24(1), which states:

If a taxpayer fails or refuses to file a return or pay a tax administered under this act within the time specified, the department, as soon as possible, shall assess the tax against the taxpayer and notify the taxpayer of the amount of the tax. A liability for a tax administered under this act is subject to the interest and penalties prescribed in subsections (2) to (5).

The penalty must be waived if “it is shown to the satisfaction of the [treasury] department that the failure was due to reasonable cause and not to willful neglect . . .” MCL 205.24(4). The petitioner bears the burden of establishing reasonable cause by clear and convincing evidence. Rule 13, 1999 AC, R 205.1013(4).

Here, the MTT’s conclusion that respondent properly assessed a penalty for petitioner’s failure to file or pay taxes is supported by competent, material and substantial evidence. Petitioner is a limited liability company engaged in the business of aircraft leasing that entered into a sophisticated commercial purchase and lease agreement for the 1980 aircraft. Further, petitioner was aware of the existence of the tax rules and regulations before the purchase of the 1980 aircraft because it had been assessed and paid the use tax based on the purchase price of a previous aircraft. While petitioner contends that a myriad of tax rules and regulations caused its confusion and subsequent failure to pay the use tax, the lower court record shows no attempt by petitioner to ascertain whether it properly elected the rental receipts method. Accordingly, we conclude that the MTT properly determined that petitioner failed to show by clear and convincing evidence that its failure to pay use tax on the 1980 aircraft was due to reasonable cause.

We affirm.

/s/ Michael J. Cavanagh  
/s/ Jane E. Markey  
/s/ Patrick M. Meter